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Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Bell Operating Company Provision
of Out-of-Region Interstate,
Interexchange Services

CC Docket No. 96-21

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PETITION FOR RECONSIDERATION AND/OR CLARIFICATION
OF MCI TELECOMMUNICATIONS CORPORATION

Pursuant to Section 1.429 of the Commission's Rules and Regulations, 47 C.F.R. § 1.429, MCI Telecommunications Corporation (MCI), by its undersigned attorneys, hereby requests the Commission to reconsider and/or clarify its Report and Order released in the above-captioned proceeding on July 1, 1996.¹ As explained herein, the Report and Order (Order) fails to address an issue raised by MCI that is inextricably linked to the international application of the Order, namely, the treatment of international "return" traffic terminating in the region served by a Bell Operating Company (BOC). MCI requests that, where facilities-based outbound out-of-region international traffic carried by a BOC generates "return" traffic terminating in the BOC's region, such return traffic be treated as in-region originating traffic and thus beyond the BOC's authority to terminate until it obtains in-region authority under Section 271 of the Communications Act.

¹ FCC No. 96-288, published at 61 Fed. Reg. 35964 (July 9, 1996).

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A. Background

In its Notice of Proposed Rulemaking initiating this proceeding,² the Commission sought comment on the interim regulatory treatment to be accorded "out-of-region" BOC interLATA services, authorized by the new Section 271 of the Communications Act, added by Section 151 of the Telecommunications Act of 1996 (1996 Act).³ In its initial comments, AT&T pointed out that this proceeding would not appear to cover international services, since the dominance or nondominance of such services requires a country-by-country analysis that is beyond the scope of this proceeding.

In response to that point, MCI, in its Reply Comments, agreed with AT&T and argued that some of the same market factors unique to the international sphere that require a country-by-country analysis also require that the Commission address the issue of international "return" traffic in this proceeding. Typically, under the operating agreements entered into between U.S. international carriers and foreign administrations, outbound traffic carried by a U.S. carrier generates return traffic from the foreign administration to that carrier. Under the Commission's policy of proportionate return, each U.S. international carrier is obligated to accept an allocation of return traffic from a foreign administration that is no greater than the U.S. carrier's share of all U.S. outbound traffic to

² FCC No. 96-59 (released Feb. 14, 1996).

³ Pub. L. No. 104-104, 110 Stat. 56 (1996).

that country.⁴

MCI accordingly pointed out in its Reply Comments (at 6) that a BOC's facilities-based out-of-region outbound international traffic might well generate return traffic that terminates in its region.⁵ Because of that linkage, MCI argued that such return traffic should be considered an in-region service under Section 271(j). Thus, a BOC should not be permitted to carry that traffic until it obtains authority under Section 271 to provide interLATA service originating in its region.

The Order omitted any discussion of this issue, except to state that this proceeding does not cover international out-of-region services.⁶ Notwithstanding that statement, the Commission has applied the rules adopted in the Order to BOC out-of-region international services on an interim basis, finding that the competitive and ratepayer protection concerns underlying those rules apply similarly to domestic and international services.⁷

⁴ Mackay Radio and Telegraph Co., 2 FCC 592 (1936), aff'd en banc, 4 FCC 150 (1937), aff'd sub nom., Mackay Radio and Telegraph Co. v. FCC, 97 F.2d 641 (D.C. Cir. 1938).

⁵ Where a carrier provides international service on a resale basis, rather than on a facilities basis, it cannot generate return traffic, since the allocation of return traffic is governed by the underlying facilities-based international carrier's operating agreement.

⁶ Order at ¶ 1 n.5.

⁷ See Order, Authorization and Certificate, NYNEX Long Distance Co. Application for Authority Pursuant to Section 214 of the Communications Act of 1934, as amended, to Provide International Services from Certain Parts of the United States to International Points through Resale of International Switched

Thus, BOCs have been granted authority to provide out-of-region international services on a non-dominant resale basis on condition that they provide such services through separate affiliates meeting the conditions set forth in the Order for domestic BOC out-of-region interLATA service.⁸

B. International Return Traffic Terminating in a BOC's Service Region That is Generated by the BOC's Facilities-Based Out-of-Region Outbound Traffic Should be Considered an In-Region Service

Section 271(j) of the Act provides that 800 service, private line service "or their equivalents" that terminate within a BOC's region and allow the called party to determine the interLATA carrier should be considered an in-region service subject to all of the requirements for in-region service, which is defined in Section 271(b)(1) as interLATA service originating in a BOC's region. As discussed above, a BOC could generate return traffic to its region by virtue of its outbound international facilities-based service. A BOC in that situation thus exercises the type of control over the choice of carrier for such return traffic -- namely, itself -- that a caller usually does domestically.

Neither the caller nor the called party to an international call originating overseas chooses the U.S. interLATA carrier in the same manner as in the case of domestic calls, but, in effect, all of the U.S. calling parties using a BOC affiliate for

Service, et al., ITC-96-125, et al., DA 96-1169 (released July 24, 1996), at ¶¶ 17-24.

⁸ Id.

outbound international facilities-based service would have indirectly "chosen" that affiliate to carry return calls terminating in its region through the workings of the proportionate return policy. Because return traffic is thus elicited by a carrier's outbound traffic, and since a foreign calling party to an international call exercises no control at all on the choice of carrier, international return traffic terminating in a BOC's region should be treated in the same manner as a service originating in the BOC's region. The BOC exercises the type of control over such traffic that it does over traffic originating in-region, thus raising similar competitive and ratepayer concerns.

Although the Order states that it does not cover international services, it has been applied to BOC out-of-region international resale services, as discussed above, and thus may be applied to BOC facilities-based out-of-region services in the future. Accordingly, the Commission should reconsider or clarify the Order to make it clear that where BOC out-of-region facilities-based international services generate return traffic that terminates in-region, such return traffic will be considered an in-region originating service and thus beyond the BOC's authority until it acquires in-region authority. Any such traffic would therefore have to be handed off to another international carrier for termination. Such a ruling is needed now, so that it may be applied to any subsequent BOC Section 214

applications to provide facilities-based out-of-region service.⁹

WHEREFORE, for the reasons stated above, MCI respectfully requests that the Order be reconsidered and/or clarified to state that international return traffic terminating in a BOC's region that is generated by the BOC's facilities-based out-of-region outbound traffic will be considered the equivalent of BOC in-region service and thus beyond the BOC's authority until it obtains in-region authority.

Respectfully submitted,

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Dated: August 8, 1996

⁹ Moreover, if the Commission waits until the pending BOC In-Region proceeding to resolve this issue, it will be largely moot, since that proceeding addresses the safeguards to be applied once the BOCs obtain in-region authority. See Notice of Proposed Rulemaking, Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended; and Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area, CC Docket No. 96-149, FCC No. 96-308 (released July 18, 1996).

CERTIFICATE OF SERVICE

I, Sylvia Chukwuocha, do hereby certify that the foregoing PETITION FOR RECONSIDERATION were served this 8th day of August, 1996, by first-class mail, postage prepaid, on the following parties listed below:

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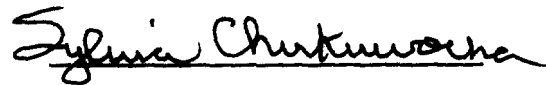
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A handwritten signature in cursive script, reading "Sylvia Chutkan". The signature is written in black ink and is positioned above a horizontal line.